



August 6, 2002

Ms. Tamara Pitts
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2002-4292

Dear Ms. Pitts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166715.

The City of Fort Worth (the “city”) received a request for 12 categories of information generally related to the Stonegate Village Apartments. You inform us that the city has released some of the information responsive to the request, but claim that a portion of the requested information is excepted under sections 552.105, 552.110 and 552.131 of the Government Code. You also notified the Fort Worth Housing Authority (the “authority”) of the request for information pursuant to section 552.305 of the Government Code. The authority argues that information responsive to the request for “[a]ll documents relating to potential sites for the relocation of Ripley Arnold residents” is excepted from disclosure under section 552.105. We have considered the arguments of all parties and reviewed the submitted information.

Initially, we note that you inform this office that the information at issue was “given to the city in confidence” by the authority. We further note that the authority argues that it transferred the information to the city, and that if the information was excepted from disclosure in the possession of the authority, then it is still excepted while in the possession of the city. This office has concluded that information may be transferred between governmental bodies that are subject to the act without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516

(1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* Open Records Decision No. 516 (1989). Thus, the release of information by one agency to another agency is not a release to the public for the purposes of section 552.007 of the Government Code, which prohibits the selective disclosure of information, or for those of section 552.352, which provides criminal penalties for the release of information that is considered to be confidential. *Id.* Therefore, pursuant to the interagency transfer doctrine, the authority has not waived its section 552.105 claim by transferring the information to the city. We will therefore address the authority's argument for withholding the submitted information under section 552.105.

Section 552.105 excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Gov't Code § 552.105. Section 552.105 is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. Open Records Decision Nos. 564 (1990), 357 (1982), 222 (1979). Information excepted under section 552.105 that pertains to such negotiations may be excepted so long as the transaction is not complete. Open Records Decision Nos. 310 (1982), 265 (1981). Because this exception extends to "information relating to" the location, appraisals, and purchase price of property, it may protect more than a specific appraisal report prepared for a specific piece of property. ORD 564 at 2. For example, we have concluded that appraisal information about parcels of land acquired in advance of others to be acquired for the same project could be withheld where this information would harm the governmental body's negotiating position with respect to the remaining parcels. *Id.* We have also held that section 552.105 applies to leases as well as purchases of real estate. Open Records Decision No. 348 (1982). A governmental body may withhold information "which, if released, would impair or tend to impair [its] 'planning and negotiating position in regard to particular transactions.'" ORD 357 at 3 (quoting ORD 222). When a governmental body has made a good faith determination that the release of information would damage its negotiating position with respect to a real estate transaction, the attorney general will accept that determination unless the records or other information show the contrary as a matter of law. ORD 564.

The authority states that it "has made a good faith determination that the information . . . at issue, if publicly released, would impair its planning and negotiation position. The [authority] is in the process of replacing 268 public housing units. Construction has begun at the Overton site to replace approximately 54 units. The Stonegate site has been acquired to replace approximately 58 units. That leaves approximately 156 units still to be replaced." On the

basis of these assertions and our review of the submitted information, which pertains to potential sites for the relocation of Ripley Arnold residents, we find that section 552.105 is applicable in this instance. The city may therefore withhold under section 552.105 the information in submitted Exhibit C that has not previously been released. As we are able to make this determination, we need not address your remaining arguments.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 166715

Enc. Submitted documents

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